

## THIRD DIVISION

[ G.R. No. 153432, February 18, 2004 ]

**BAHIA SHIPPING SERVICES, INC., MA. CYNTHIA G. MENDOZA  
AND RED BAND A/S, PETITIONERS, VS. OSCAR P. MOSQUERA,  
RESPONDENT.**

### D E C I S I O N

**VITUG, J.:**

The rules of procedure are designed to ensure a fair, orderly and expeditious disposition of cases; however, the rules are not meant to allow hasty judgments at the price of great injustice. Where a strict and unflinching reliance on technical rules will defeat their real objective, and where the non-observance thereof is neither deliberate nor with intent to cause any undue delay by a party, a liberal construction of those rules would be becoming, if not compelling, at times.

Before the Court is a petition for review on *certiorari*, assailing the judgment of the Court of Appeals which has upheld the order of default issued by the court *a quo*. The case has originated from Civil Case No. 23482, entitled "Oscar P. Mosquera vs. Bahia Shipping Services, Cynthia Mendoza and Red Band A/S" before the Regional Trial Court, Branch 29, of Iloilo City. The appellate court gives its narration of the controversy.

"Respondent Oscar Mosquera filed his Complaint against petitioners with the Regional Trial Court in Iloilo City on February 28, 1997 which was docketed as Civil Case No. 23482 and assigned to Branch 29, the *sala* of the respondent judge.

"Herein petitioner Bahia Shipping filed a Motion to Dismiss, questioning, among others, the jurisdiction of the Regional Trial Court which motion was eventually denied by the respondent judge in an Order dated May 8, 1997. A Motion for Reconsideration was filed, but the same was also denied in an Order dated June 18, 1997.

"Petitioners initiated certiorari proceedings with the appellate courts questioning the refusal of the respondent judge to dismiss the case entitled 'Bahia Shipping Services Inc., Ma. Cynthia Mendoza and Red Band A/S vs. Hon. Rene Honrado, Presiding Judge Regional Trial Court of Iloilo, and Oscar P. Mosquera' docketed as CA-G.R. SP No. 45282. The same was dismissed by the Court of Appeals and taken on appeal by certiorari with the Supreme Court.

"In the meantime, petitioners filed their Answer in the case *a quo*.

"Eventually, the case was scheduled for pre-trial on September 17, 1997.

"On September 11, 1997, petitioners filed a manifestation with motion to defer pre-trial proceedings in view of the certiorari petition that had been filed with the Court of Appeals and to ensure that the pre-trial would indeed be deferred, [the law office (for herein petitioners) (supplied)] called up the sala of respondent judge for confirmation. It was confirmed by the court personnel, particularly, the Branch Clerk of Court, Atty. Elizabeth Sumague-Payba - that there was no need to file the pre-trial brief yet nor to attend the scheduled pre-trial because the respondent judge would first rule on the Motion of September 11, 1997.

"Specifically, when the [law office (for petitioners) (supplied)] — through then handling lawyer, Atty. Ruben R. Capahi — called up the sala of respondent judge, it was Atty. Sumague-Payba who answered the phone. She put Atty. Capahi on hold while she went to confer with respondent judge. Afterwards, she got back on the phone and told Atty. Capahi that, in view of the motion filed, there was, as yet, no need to file the pre-trial brief and attend the scheduled pre-trial conference on September 17, 1997. In fact, in a subsequent occasion, when Atty. Capahi called the sala of respondent judge to find out the status of the case, he was able to talk to respondent judge himself, and the latter confirmed that he had indeed advised that such pre-trial brief was not needed to be filed at that time and neither was it necessary for the parties and counsels to attend the September 17, 1997 schedule.

"On September 17, 1997, however, despite his advice to petitioners' counsel, respondent judge apparently proceeded with the pre-trial hearing and subsequently, respondent Mosquera filed a motion to declare petitioners as in default to which the latter vigorously opposed the same.

"On January 6, 1998, petitioners, through counsel, received the Order dated December 11, 1997 declaring them as in default for their failure to file their pre-trial brief and to attend the pre-trial on September 11, 1997.

"Petitioners filed a verified Motion for Reconsideration dated January 15, 1998 together with an Affidavit of Merit, a separate Affidavit by Atty. Capahi, as well as their pre-trial brief to which private respondent filed an Opposition thereto. Thereafter, petitioners filed a reply to the opposition."

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The motion for reconsideration having been denied in the order, dated 27 July 2001, of the trial court, petitioners raised the issue before the Court of Appeals. The appellate court, on 05 December 2001, sustained the ruling of the court a quo, by dismissing the appeal, now the subject of the instant petition for review.

The petition is meritorious.

Pre-trial is that stage of the proceedings when the last pleading has been filed and the parties explore possible ways to avoid a protracted trial, including the possibility of an amicable settlement or a summary judgment, the submission of the case to alternative modes of dispute resolution, a stipulation of facts, or the limitation of the number of witnesses. Whereas pre-trial has before been optional, the new rules of